48A C.J.S. Judges § 331

Corpus Juris Secundum | October 2023 Update

Judges
Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

D. Objections to Judge and Proceedings Thereon

3. Determination of Objection to Judge

§ 331. Decision on application to disqualify judge

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Judges 51(4)

Where the application or affidavit seeking disqualification of a judge is legally sufficient and in conformity with the statute, the judge may or should disqualify himself or herself, but except where disqualification is mandatorily required, a certain degree of discretion should be exercised by the court in determining the question of disqualification.

Generally, if it is determined that the application or affidavit is legally sufficient and in conformity with the statute, a change of judge is required, and the court is without discretion to refuse the application[1] since the affidavit ipso facto justifies the disqualification of the judge.[2] On the other hand, where the application or affidavit is legally insufficient, the judge may or should overrule it and not disqualify himself or herself[3] and should not permit its use to accomplish delay or embarrass the administration of justice.[4] Thus, where the application or affidavit does not comply with the statutory requisites,[5] as where it contains merely conclusory allegations,[6] the court may disregard it and deny the application. Also, if the ground asserted in the affidavit is wholly without foundation in fact, the judge should refuse to disqualify himself or herself.[7]

Generally, except where a statute imposes an absolute duty to grant an application for a change of judge, a certain degree of discretion may be exercised by the judge or court determining the question.[8] It is a matter of discretion for the trial judge as to whether to recuse himself or herself where the affidavit of bias is insufficient[9] or where the motion is not supported by affidavit as required by statute.[10] However, any discretion in determining an application for a change of judge is not absolute, and if it appears that a fair and impartial trial cannot be had before such judge, it is the judge's duty to transfer the case.[11] The

determination involved may be that of issues of fact,[12] and in some jurisdictions, the issue committed to judicial discretion is whether a reasonable person would infer, from all the circumstances, that the judge's impartiality is subject to question.[13]

In ruling on a motion for disqualification, the judge should regard himself or herself as bound by the fundamental fairness doctrine of the Fourteenth Amendment Due Process Clause and by applicable enactments of Congress and may also properly consider as an aid to the exercise of informed discretion any and all codes of judicial conduct and any advisory directives of the judicial conference of the United States.[14] A judge who is faced with a question of his or her capacity to rule fairly must consult first his or her own emotions and conscience and, if the judge passes the internal test of freedom from disabling prejudice, must then attempt an objective appraisal of whether the proceeding in question is a proceeding in which his or her impartiality might reasonably be questioned.[15]

A judge is not required to withdraw from hearing a case upon a mere suggestion that the judge is disqualified to sit,[16] and it is improper for the judge to do so unless the alleged cause of recusation is known by the judge to exist or is shown by proof to be true in fact.[17] If the motion to recuse a judge, on its face, does not show grounds for recusal even if its allegations are proved, the judge should overrule the motion.[18] If the slightest question exists, all doubts should be resolved in favor of disqualification,[19] but if it appears that the motion to disqualify is frivolous, or made to delay the proceedings, or has no foundation justifying recusal, it should be denied.[20] It has been stated that while distance is not an insurmountable barrier to recusal, the relative availability of other judges is a relevant and proper consideration in a decision regarding judicial disqualification.[21]

Although, where the objection is based on a ground palpably false, it may be overruled without hearing proof,[22] the discretion is not an arbitrary one.[23] The denial of a proper motion for change of judge without the requisite hearing is improper and voids all subsequent actions of the court.[24]

CUMULATIVE SUPPLEMENT

Cases:

District judge did not abuse his discretion in recusing himself on plaintiffs' motion for prejudgment interest because he was heavily involved in mediating resolution of case, where award of prejudgment interest under state law required showing of prevailing party's good faith effort to settle and non-prevailing party's lack of such effort, it was likely he would have been called as witness, judge presided over other cases in multidistrict litigation (MDL) against defendant, and ruling on defendant's good faith in pursuing pre-trial settlement might have impaired his ability to assist in settling remaining MDL cases. 28 U.S.C.A. § 455(a); Fed.Rules Evid.Rule 605, 28 U.S.C.A.; Ohio R.C. § 1343.03(C)(1). Decker v. GE Healthcare Inc., 770 F.3d 378 (6th Cir. 2014).

Any doubts must be resolved in favor of recusal. 28 U.S.C.A. § 455(a). In re Moody, 755 F.3d 891 (11th Cir. 2014).

Trial court did not abuse its discretion in denying motion to disqualify or recuse judge on retrial on charges for kidnapping with bodily injury, aggravated assault, and related offenses, despite defendant's assertion that judge's impartiality might reasonably be questioned due to petition for writ of mandamus filed against judge for failing to timely dispose of charges after they were reversed on direct appeal approximately 19 years prior, where motion was untimely, it was not properly presented to trial court, and it was not accompanied by affidavit. Ga. Unif. Super. Ct. R. 25.3. Levin v. State, 816 S.E.2d 170 (Ga. Ct. App. 2018).

Trial judge who presided over capital murder trial acted within his discretion in not recusing himself from presiding over postconviction proceeding due to alleged judicial bias, where judge analyzed disqualification motion pursuant to defendant's

suggested standard, and judge made an oral ruling and written order explicitly concluding that there was no appearance of bias. Hall v. State, 533 P.3d 243 (Idaho 2023).

Divorce judge's failure to recuse himself after presiding over husband's criminal arraignment was not an abuse of discretion; the judge received information concerning husband's new criminal charges through the regular course of in-custody initial appearances, he promptly alerted the parties of his inadvertent receipt of new evidence, placed the matter on the record, acknowledged that the information about husband, if accurate, was damaging to husband's demand that he be granted sole parental rights and responsibilities for the parties' child, thoughtfully considered husband's motion to recuse, and then denied the motion, and after denying that motion the judge provided husband with an opportunity to be heard regarding his behavior that led to the arraignment. Me. Code of Jud. Conduct, Canon 2.11(A)(1). Mathiesen v. Michaud, 2020 ME 47, 229 A.3d 527 (Me. 2020).

Trial judge was obligated to hear the case involving modification of parental rights and responsibilities once he determined he could decide the matter impartially, and as such, judge did not abuse his discretion by denying ex-husband's motion for recusal; judge's previous orders were based on competent evidence in the record and the judge's evaluation of the children's best interests in a highly contentious post-divorce situation, judge did not demonstrate personal animosity or bias, and once judge became aware of his potential connection to ex-wife or her extended family members, which was tenuous at best, judge fulfilled his duty to promptly disclose to the parties any fact known to the court that was relevant to the question of impartiality. Robertson v. Gerakaris, 2015 ME 83, 119 A.3d 739 (Me. 2015).

A motion requesting a trial judge to recuse himself or herself on the ground of bias or prejudice is addressed to the discretion of the judge. Buttercase v. Davis, 313 Neb. 1, 982 N.W.2d 240 (2022).

County court judge did not improvidently exercise his discretion in declining to recuse himself from deciding defendant's motion to set aside verdict in prosecution for multiple crimes relating to defendant's operation of motor vehicle while intoxicated; defendant did not allege basis for disqualification under Judiciary Law, there was no evidence in record to suggest that judge was biased, and there was no basis on which to reasonably question court's ability to impartially preside over matter. N.Y. CPL § 330.30; N.Y. Judiciary Law § 14. People v. Murphy, 218 A.D.3d 795, 194 N.Y.S.3d 248 (2d Dep't 2023).

Trial court judge's discretionary decision not to recuse himself in dispute between construction company and project owner over alleged improprieties connected to the project was within personal conscience of the court and would not be overturned absent abuse of discretion, where construction company, in requesting recusal, did not contend that any of the mandatory bases for recusal applied. Largo 613 Baltic Street Partners LLC v. Stern, 210 A.D.3d 430, 177 N.Y.S.3d 43 (1st Dep't 2022).

Family court did not abuse its discretion in denying juvenile's recusal motion in delinquency proceedings; court was presumed capable of making fair fact-finding determination based on the evidence adduced at the proceeding and relevant burden of proof, even though court had presided over other hearings and made findings of fact on issues other than on juvenile's guilt or innocence. In re Tyquan C., 123 A.D.3d 502, 998 N.Y.S.2d 188 (1st Dep't 2014).

Supreme Court providently exercised its discretion in declining to recuse itself from divorce action; former wife failed to demonstrate that any determinations in case were result of bias. Hayes v. Barroga-Hayes, 117 A.D.3d 794, 985 N.Y.S.2d 673 (2d Dep't 2014).

Trial court did not abuse its discretion by denying husband's motion for judge to recuse himself in divorce action based upon vague allegations of potential lack of impartiality based on concerns about judge's prior relationship with wife; although husband alleged that judge spent quality time with wife and had long standing friendship with her, judge indicated that he knew who wife was but was never in any type of relationship with her, and husband did not provide any evidence other than his allegations. Grasser v. Grasser, 2018 ND 85, 909 N.W.2d 99 (N.D. 2018).

Judge did not abuse his discretion in denying father's motion to recuse himself in child custody and child support case; statute, relating to a demand for change of judge, did not apply since father did not file his motion for recusal under this statute, and district court judge was not immediately divested of authority upon the filing of a motion to recuse. NDCC 29–15–21. Schweitzer v. Mattingley, 2016 ND 231, 887 N.W.2d 541 (N.D. 2016).

[END OF SUPPLEMENT]

Footnotes

1 La.—State v. Doleman, 835 So. 2d 850 (La. Ct. App. 4th Cir. 2002), writ denied, 853 So. 2d 633 (La. 2003).

Wash.—State v. Franulovich, 89 Wash. 2d 521, 573 P.2d 1298 (1978).

Regardless of judge's opinion of movant's motives
Mo.—Matter of Buford, 577 S.W.2d 809 (Mo. 1979).

2 Cal.—In re Jose S., 78 Cal. App. 3d 619, 144 Cal. Rptr. 309 (4th Dist. 1978).

Kan.—City of Neodesha v. Knight, 226 Kan. 416, 601 P.2d 669 (1979).

Judge's knowledge of filing irrelevant
N.M.—State v. Latham, 83 N.M. 530, 1972-NMCA-025, 494 P.2d 192 (Ct. App. 1972).

3 Fla.—Gregory v. State, 118 So. 3d 770 (Fla. 2013).

Ga.—Lacy v. Lacy, 320 Ga. App. 739, 740 S.E.2d 695 (2013).

Kan.—State v. Robinson, 293 Kan. 1002, 270 P.3d 1183 (2012).

Affirmative duty not to withdraw
U.S.—U.S. v. Sinclair, 424 F. Supp. 715 (D. Del. 1976).

4 U.S.—Taylor v. U.S., 429 U.S. 919, 97 S. Ct. 313, 50 L. Ed. 2d 285 (1976); U.S. v. Hall, 424 F. Supp. 508 (W.D. Okla. 1975), judgment aff'd, 536 F.2d 313 (10th Cir. 1976); U.S. v. Orbiz, 366 F. Supp. 628 (D.P.R. 1973).

5 Ariz.—Liston v. Butler, 4 Ariz. App. 460, 421 P.2d 542 (1966).

Cal.—In re Morelli, 11 Cal. App. 3d 819, 91 Cal. Rptr. 72 (2d Dist. 1970).

6 U.S.—Klayman v. Judicial Watch, Inc., 628 F. Supp. 2d 84 (D.D.C. 2009).

Colo.—Kane v. County Court Jefferson County, 192 P.3d 443 (Colo. App. 2008).

Mont.—Burns v. State, 2013 MT 198N, 372 Mont. 548, 2013 WL 3804077 (2013).

Factual statements essential
U.S.—Hayes v. National Football League, 463 F. Supp. 1174 (C.D. Cal. 1979).

Reliance on hearsay may be taken into account
U.S.—Hodgson v. Liquor Salesmen's Union Local No. 2 of State of N. Y., Distillery, Rectifying, Wine and Allied Workers' Intern. Union of America, AFL-CIO, 444 F.2d 1344 (2d Cir. 1971).

7 U.S.—Hayes v. National Football League, 463 F. Supp. 1174 (C.D. Cal. 1979).

Cal.—In re Morelli, 11 Cal. App. 3d 819, 91 Cal. Rptr. 72 (2d Dist. 1970).

Fla.—Hooks v. State, 207 So. 2d 459 (Fla. 2d DCA 1968).

8 Mass.—Com. v. Eddington, 71 Mass. App. Ct. 138, 879 N.E.2d 1261 (2008).

Me.—State v. Atwood, 2010 ME 12, 988 A.2d 981 (Me. 2010).

Minn.—Hooper v. State, 838 N.W.2d 775 (Minn. 2013).

W. Va.—State ex rel. Pritt v. Vickers, 214 W. Va. 221, 588 S.E.2d 210 (2003).

9 U.S.—Smith v. State of N. C., 528 F.2d 807 (4th Cir. 1975).

10 Fla.—A. S. v. State, 275 So. 2d 286 (Fla. 3d DCA 1973).

11 Neb.—Franks v. Franks, 181 Neb. 710, 150 N.W.2d 252 (1967).

12 Vt.—State v. Rocheleau, 131 Vt. 563, 313 A.2d 33 (1973).

13 U.S.—Baker v. City of Detroit, 458 F. Supp. 374 (E.D. Mich. 1978).

Totality of allegations and proof

In determining whether there exists the bias required for recusation of a judge, it is not necessary to consider whether any one of the allegations contained in the petition and the proof and support thereof, standing alone, warrants disqualification.

Ala.—Ex parte White, 53 Ala. App. 377, 300 So. 2d 420 (Crim. App. 1974).

14 U.S.—In re Virginia Elec. & Power Co., 539 F.2d 357 (4th Cir. 1976).

15 Mass.—Lena v. Com., 369 Mass. 571, 340 N.E.2d 884 (1976).

16 N.J.—State v. Hanson, 59 N.J. Super. 434, 157 A.2d 847 (App. Div. 1960).

17 N.J.—State v. Hanson, 59 N.J. Super. 434, 157 A.2d 847 (App. Div. 1960).

18 Cal.—Keating v. Superior Court of the City and County of SanFrancisco, 45 Cal. 2d 440, 289 P.2d 209 (1955).

La.—State v. Lukefahr, 363 So. 2d 661 (La. 1978).

19 U.S.—Fideicomiso De La Tierra del Cano Martin Pena v. Fortuno, 631 F. Supp. 2d 134 (D.P.R. 2009).

Ohio—White v. Hicks, 118 Ohio App. 56, 24 Ohio Op. 2d 377, 193 N.E.2d 193 (7th Dist. Ashtabula County 1961).

Tenn.—Hamilton v. State, 218 Tenn. 317, 403 S.W.2d 302 (1966).

Vt.—Condosta v. Condosta, 137 Vt. 35, 401 A.2d 897 (1979).

20 Mass.—Police Com'r of Boston v. Municipal Court of West Roxbury Dist., 368 Mass. 501, 332 N.E.2d 901 (1975).

Vt.—Condosta v. Condosta, 137 Vt. 35, 401 A.2d 897 (1979).

21 U.S.—U.S. v. Conforte, 457 F. Supp. 641 (D. Nev. 1978), judgment aff'd, 624 F.2d 869 (9th Cir. 1980).

22 Tex.—Benson v. State, 39 Tex. Crim. 56, 44 S.W. 167 (1898).

23 Cal.—Younger v. Superior Court of Santa Cruz, 136 Cal. 682, 69 P. 485 (1902).

24 Ill.—People v. Morrow, 100 Ill. App. 2d 1, 241 N.E.2d 680 (1st Dist. 1968).

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